



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS-R4-ES-2013-0100; FWS-R4-ES-2013-0030]

[4500030113]

RIN 1018-AY72; 1018-AZ55

Endangered and Threatened Wildlife and Plants; Threatened Species Status and Designation of Critical Habitat for *Arabis georgiana* (Georgia Rockcress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 12, 2013, proposed rule to list *Arabis georgiana* (Georgia rockcress) as a threatened species under the Endangered Species Act

of 1973, as amended (Act); the reopening of the public comment period on the September 12, 2013, proposed rule to designate critical habitat for *A. georgiana*; the amended required determinations section of the proposed rule to designate critical habitat; and the availability of a draft economic analysis (DEA) for the proposed designation of critical habitat. We are reopening both proposed rules' comment periods to allow all interested parties an opportunity to comment simultaneously on the proposed rules, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: *Written comments:* We will consider comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational session and public hearing: We will hold a public informational session and public hearing on the proposed rules in Columbus, Georgia on May 28, 2014, from 7 p.m. to 9 p.m.

ADDRESSES: *Document availability:* For the proposed listing, you may obtain copies of the proposed rule and associated documents on the Internet at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2013-0100. For the proposed

critical habitat designation, you may obtain copies of the proposed rule, associated documents, and the draft economic analysis on the Internet at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2013–0030. You may also obtain copies of these materials by mail from the Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Submit comments on the proposed listing by searching for Docket No. FWS–R4–ES–2013–0100 or on the proposed critical habitat designation and its associated draft economic analysis by searching for Docket No. FWS–R4–ES–2013–0030.

(2) *By hard copy:* Submit comments on the proposed listing by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0100; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the proposed critical habitat designation and its associated draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section, below, for more information).

Public informational session and public hearing: A public informational session and public hearing will be held in the Magnolia Room at Columbus State University, 4225 University Avenue, Columbus, GA 31907. People needing reasonable accommodations to attend and participate in this public hearing should contact Robin Goodloe as soon as possible (see **FOR FURTHER INFORMATION CONTACT**, below).

FOR FURTHER INFORMATION CONTACT: Robin Goodloe, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 105 Westpark Drive, Suite D, Athens, GA 30606; telephone 706-613-9493; facsimile 706-613-6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our September 12, 2013, proposed rule to list *Arabis georgiana* as a threatened

species (78 FR 56192); our September 12, 2013, proposed rule to designate critical habitat for *A. georgiana* (78 FR 56506); our DEA of the proposed critical habitat designation; and the amended required determinations provided in this document for the proposed rule to designate critical habitat. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

- (1) Georgia rockcress's biology, range, and population trends, including:
 - (a) Biological or ecological requirements of the species, including habitat requirements for growth and reproduction;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat, or both.
- (2) Factors that that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The distribution of *Arabis georgiana*;

(b) The amount and distribution of *A. georgiana* habitat;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on *Arabis georgiana* and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on the benefits of including or excluding areas that exhibit these impacts.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(12) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rules (78 FR 56192 or 78 FR 56506) during the initial comment period from September 12, 2013, to November 12, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Our final determinations will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final critical habitat determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rules or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a

hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

For the proposed listing, you may obtain copies of the proposed rule and associated documents (including comments and materials we receive and supporting documentation we used in preparing the proposed rule) on the Internet at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2013–0100. For the proposed critical habitat designation, you may obtain copies of the proposed rule, associated documents (including comments and materials we receive and supporting documentation we used in preparing the proposed rule), and the draft economic analysis on the Internet at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2013–0030. You may also obtain copies of these materials by mail from the Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the listing or designation of critical habitat for *Arabis georgiana* in this document. On September 12, 2013, we published a proposed rule to list *A. georgiana* as threatened under the Act (78 FR 56192). In the proposed rule, we determined that the most serious threats to the species are habitat degradation and the subsequent invasion of exotic species. Specifically, disturbance associated with timber harvesting, road building, and grazing

has created favorable conditions for the invasion of exotic weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. These threaten the species throughout its range.

On September 12, 2013, we published a proposed rule to designate critical habitat for the *Arabis georgiana* (78 FR 56506). In total, we proposed 323 hectares (ha) (786 acres (ac)). The proposed critical habitat is located in Georgia including parts of Gordon, Floyd, Harris, Muscogee, Chattahoochee, and Clay Counties; and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Russell, Sumter, and Wilcox Counties. Under **Corrections to Proposed Critical Habitat Designation for *Arabis georgiana***, below, we correct the acreage numbers provided in our September 12, 2013, proposed critical habitat designation.

Both proposed rules had a 60-day comment period, ending November 12, 2013. We intend to publish in the **Federal Register** final determinations concerning listing *Arabis georgiana* and designating critical habitat for the species on or before September 12, 2014.

For more information on previous Federal actions concerning *Arabis georgiana* or its habitat, refer to the proposed listing rule published in the **Federal Register** on September 12, 2013 (78 FR 56192), which is available online at <http://www.regulations.gov> (at Docket No. FWS-R4-ES-2013-0100) or from the office

listed under **FOR FURTHER INFORMATION CONTACT**, above.

Critical Habitat

The remainder of this document addresses our proposed critical habitat designation for *Arabis georgiana*.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed critical habitat designation is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area

as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Arabis georgiana*, the benefits of critical habitat include public awareness of the presence of *A. georgiana* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *A. georgiana* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken or authorized by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-

economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the *Arabis georgiana* (U.S. Fish and Wildlife Service 2013). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation)

and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are therefore, unlikely to incur incremental economic impacts. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is our draft economic analysis of the proposed critical habitat designation for the *Arabis georgiana* and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable and if sufficient data are available, the probable impacts to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our IEM dated December 4, 2013, first we identified probable incremental economic impacts associated with the following

categories of activities: (1) transportation; (2) water quantity/supply; (3) conservation/restoration; (4) forest management; (5) hydropower; (6) mining; (7) in-water construction; and (8) utilities (U.S. Fish and Wildlife Service, 2013). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *Arabis georgiana* is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to distinguish between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for *Arabis georgiana*'s critical habitat. Because the designation of critical habitat for *A. georgiana* was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same

features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to *A. georgiana* would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species.

Based on the available information, we anticipate fewer than five consultations per year in occupied units, with costs of administrative efforts ranging from approximately \$400 to \$9,000 per consultation (2014 dollars, total cost for all parties participating in a single consultation). Applying these unit cost estimates, this analysis conservatively estimates that the administrative cost of considering adverse modification in section 7 consultation will result in incremental costs of up to \$45,000 (2014 dollars) in a given year. .

Corrections to Proposed Critical Habitat Designation for *Arabis georgiana*

In the proposed rule, Unit 7A was described as 12 hectares (ha) (29 acres) in size, and Unit 9B was described as 13 ha (21 acres) in size. Unit 7A was incorrect due to a minor error in the analysis (within the Geographical Information System), and Unit 9B was a typographical error. The correct numbers are 11 ha (26 ac) for Unit 7A, and 13 ha (31 ac) for Unit 9B with a total area of critical habitat of 322 ha (793 ac), these values have been corrected in the table and information provided below.

In total, we are proposing 18 critical habitat units encompassing approximately 322 hectares (ha) (793 acres (ac)). The proposed critical habitat is located in Georgia including parts of Gordon, Floyd, Harris, Muscogee, Chattahoochee, and Clay Counties; and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Russell, Sumter, and Wilcox Counties. Unit name, location, and the approximate area of each proposed critical habitat unit, as corrected here, are shown in Table 1.

TABLE 1. Proposed critical habitat units for Georgia rockcress.

[Area estimates reflect all land within critical habitat unit boundaries.]

Unit #	Unit Name	County/State	Ownership	Hectares	Acres
1	Fort Tombecbee	Sumter/AL	State	6	14
2	Marshalls Bluff	Monroe/AL	Private	11	27
3	Prairie Bluff	Wilcox/AL	Private	13	32
4	Portland Landing River Slopes	Dallas/AL	Private	12	31
5	Durant Bend	Dallas/AL	Private	12	28
6	Murphys Bluff Bridge Cahaba River	Bibb/AL	Private	11	26
7A	Creekside Glades	Bibb/AL	Private	11	26

7B	Little Schulz Creek	Bibb/AL	Private	12	28
8A	Cottingham Creek Bluff	Bibb/AL	Private	22	55
8B	Pratts Ferry	Bibb/AL	Private	11	28
9A	Fern Glade	Bibb/AL	Federal	14	34
9B	Sixmile Creek	Bibb/AL	Private	13	31
10A	Browns Dam Glade North	Bibb/AL	Private	14	35
10B	Browns Dam Glade South	Bibb/AL	Private	15	37
11	McGuire Ford Limestone Park	Bibb/AL	Private	6	15
12	Fort Toulouse State Park	Elmore/AL	State	7	17
13	Fort Gaines Bluff	Clay/GA	Private	17	42
14A	Fort Benning (GA)	Chattahoochee/GA	Federal	14	35
14B	Fort Benning (AL)	Russell/AL	Federal	11	26
15A	Goat Rock North	Harris/GA	Private	7	19
15B	Goat Rock South	Harris, Muscogee/GA	Private	24	59
16	Blacks Bluff Preserve	Floyd/GA	Private	37	92
17	Whitmore Bluff	Floyd/GA	Private	17	43
18	Resaca Bluffs	Gordon/GA	Private	5	13
			TOTAL	322	793

Note: Area sizes may not sum due to rounding.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the critical habitat proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our September 12, 2013, proposed rule (78 FR 56506), we indicated that we would defer our determination of compliance with certain statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for *Arabis georgiana*, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951).

However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for the *A. georgiana*, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include

manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

The Service’s current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action

agencies will be directly regulated by this designation. Federal agencies are not small entities, and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Arabis georgiana* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance, or that require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid

destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for *A. georgiana*. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that the designation of critical habitat for *A. georgiana* does not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this notice are the staff members of the Athens, Georgia, Ecological Services Office, Southeast Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: April 25, 2014

Michael Bean

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and
Parks

Billing Code 4310-55-P

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